

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

LEAGUE OF CONSERVATION VOTERS <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	No. 3:17-cv-00101-SLG
)	
DONALD J. TRUMP <i>et al.</i> ,)	
)	
<i>Defendants,</i>)	
)	
AMERICAN PETROLEUM INSTITUTE and STATE)	
OF ALASKA,)	
)	
<i>Intervenor-Defendants.</i>)	
)	

DECLARATION OF MICHAEL SENATORE

I, Michael Senatore, declare as follows:

1. I am the Vice President for Conservation Law at Defenders of Wildlife (“Defenders”). I am also a member of Defenders. Through my employment at Defenders over more than 15 years, I am familiar with nearly all aspects of its activities and organizational interests.

2. The facts set forth in this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently thereto under oath.

3. Founded in 1947, Defenders is a non-profit membership organization with more than 1.8 million members and supporters dedicated to protecting native animals and plants in their natural communities. Defenders is headquartered in Washington, D.C., with field offices in Alaska, California, Colorado, Florida, North Carolina, Idaho, Montana, New Mexico, Oregon, Washington, and Mexico.

4. Defenders counts among its top priorities protecting and restoring imperiled North American wildlife species that function in flagship, umbrella or keystone roles, and ensuring the conservation of wildlife, habitat, and ecosystems in the face of climate change. Defenders accomplishes its goals with partners at local, state, regional and national scales through demonstrated on-the-ground conservation, research, policy development, advocacy, and, when necessary, litigation. Defenders advocates sound, scientifically-based approaches to wildlife conservation that are geared to restoring imperiled species and preventing others from becoming threatened or endangered.

5. Defenders has a long history of advocating for the conservation of marine wildlife and coastal ecosystems on behalf of its members and supporters nationwide. Defenders has devoted substantial organizational resources to promoting the protection of marine wildlife under

federal statutes such as the Endangered Species Act, the Marine Mammal Protection Act, the National Environmental Policy Act, and similar laws.

6. In the organization's ten-year strategic plan for 2013–2023, sharks, sea turtles, sea otters, manatees, polar bears, manatees, migratory shorebirds, and whales are identified as key species that play functional ecological roles in their ecosystems and serve as ambassadors of ecosystem health and environmental quality. The health and vitality of these marine wildlife species is dependent on the health of the marine environment in which they exist.

7. Many of Defenders' members and supporters live in coastal states along the Atlantic Ocean or visit these states to engage in recreation or scientific study or other professional endeavors on the coasts and in the oceans. These members and supporters have aesthetic, scientific, recreational, professional, spiritual, and other interests in the marine wildlife that inhabits the Atlantic Ocean along the eastern seaboard.

8. Defenders also has members who live near or visit the Arctic Ocean to engage in recreation or scientific study or other professional endeavors. These members and supporters have aesthetic, scientific, recreational, professional, spiritual, and other interests in the Arctic environment and the marine wildlife that inhabits this unique ecosystem.

9. With respect to the Atlantic Coast, Defenders holds appointed seats on four separate take reduction teams, stakeholder groups convened under the auspices of the Marine Mammal Protection Act to reduce take of marine mammals in fisheries: Atlantic Large Whale, Harbor Porpoise, Bottlenose Dolphin, and Pilot Whale.

10. Defenders has engaged in significant policy and advocacy work under the Endangered Species Act to ensure that imperiled Atlantic marine wildlife species, including

loggerhead and green sea turtles as well as a number of shark, ray, and whale species, receive the full measure of protections to which that statute entitles them.

11. The critically endangered North Atlantic right whale is a species of particular concern to Defenders and its members. Defenders has been deeply engaged in right whale conservation advocacy and litigation efforts for many years. For example, Defenders petitioned the National Marine Fisheries Service to expand designated critical habitat for the right whale, and engaged in two separate rounds of litigation to set deadlines for the agency to act on this petition. Defenders has both litigated and engaged in the Atlantic Large Whale Take Reduction Team and the MMPA rulemaking processes to obtain regulations to reduce the threats of entanglement in fishing gear to this species. Defenders has also worked for many years to secure permanent regulatory measures to reduce the risks to right whales of ship strikes from vessel traffic along the eastern seaboard.

12. Due to its long engagement in marine mammal conservation efforts, Defenders is aware of the detrimental impacts of high intensity noise in the marine environment on cetaceans. High intensity noise can injure and kill marine mammals and disrupt behaviors critical for survival, including breeding, nursing, foraging, and communication. Defenders' concerns over the impacts of anthropogenic noise on the North Atlantic right whale led it to litigate the U.S. Navy's decision to site its Undersea Warfare Training Range in the species' only known calving and nursing habitat in southeastern U.S. waters.

13. Defenders also submitted comments to the Bureau of Ocean Energy Management on May 2, 2014, on an environmental assessment for a proposal to lease blocks of ocean offshore of Georgia for alternative energy development. These comments highlighted the agency's failure adequately to address the potential impacts of noise resulting from the construction and operation

of a meteorological tower and buoys to the right whales that use these areas for birthing and nursing their calves.

14. On April 26, 2016, Defenders joined a host of national, regional, state, and local conservation organizations urging the Bureau of Ocean Energy Management to deny pending permit applications for geological and geophysical exploration for mineral resources on the outer continental shelf. These exploration permits would have allowed seismic air gun blasting in the Atlantic that would cause large-scale harm to the environment, including to the critically endangered right whale.

15. On May 2, 2016, Defenders joined another letter prepared by the Southern Environmental Law Center commenting on the Bureau of Ocean Energy Management's (BOEM) Draft Programmatic Environmental Impact Statement for the Outer Continental Shelf Oil and Gas Leasing Program for 2017 – 2022. At the time, we found that BOEM's impact assessment of direct, indirect, and cumulative effects from oil and gas leasing in the Atlantic Program Area was adequately supported, and agreed with BOEM's assessment that Alternative B(5)(a), which does not allow oil and gas leasing in the Atlantic Program Area, was appropriately protective of the Atlantic OCS.

16. On July 21, 2017, Defenders also joined with a coalition of groups to express serious concern over the National Marine Fisheries Service's proposal to authorize five industrial seismic surveys off the east coast of the United States. 82 Fed. Reg. 26,244 (June 6, 2017).

17. Our concerns are not limited to oil and gas development. Defenders has joined with partners in commenting on the siting and operation of off-shore wind development as well, most recently in April 30, 2018, comments to the Bureau of Ocean Energy Management on an Environmental Impact Statement for the Construction and Operations Plan of Vineyard Wind,

LLC's proposed wind energy facility offshore Massachusetts. *See* 83 Fed. Reg. 13,777 (Mar. 30, 2018). On April 9, 2018, Defenders submitted comments on the selection of a procurement mechanism to support the deployment of offshore wind power off New York. Previously, Defenders also submitted comments on off-shore wind development activities in the Pacific Ocean.

18. Our work in Alaska to protect marine wildlife and the Arctic ecosystem is equally robust. Our Alaska office focuses on Alaska marine and climate change issues, with a special emphasis on marine mammals and their habitat including polar bears, ice dependent seals, Pacific walrus, and Cook Inlet beluga whales. To help support the resiliency and continued survival of these vulnerable species in the face of Alaska's rapidly changing climate, our work includes significant efforts to reduce the cumulative impacts of human activities on these species, including those from offshore oil and gas development. Our Alaska office also works to reduce human-wildlife conflicts, especially for polar bears, and other large marine predators.

19. Defenders was a strong supporter of the listing of the polar bear under the ESA and supported designation of critical habitat for the species. We submitted multiple comments to the Department of the Interior, testified on these issues before Congress, and successfully litigated in defense of both the listing of the polar bear and the subsequent designation of its critical habitat.

20. As the U.S. FWS's 2009 proposal to designate approximately 200,000 square miles of the waters and shores of the Beaufort and Chukchi seas as critical habitat for the polar bear found, increasing offshore oil and gas exploration, development, and production activities in Alaska and adjacent waters "increase the potential for disturbance of polar bears and their near shore sea-ice habitat and the relatively pristine barrier islands used for refuge, denning, and

movements. The greatest threat of future oil and gas development is the potential effect of an oil spill or discharges in the marine environment on polar bears or their habitat.” 74 Fed. Reg. 56058, 56070 (Oct. 29, 2009). Defenders and over 17,000 of its individual members and supporters spoke out in support of that designation.

21. In 2010, Defenders published and distributed the report *Sea Bear Under Siege*, a comprehensive review and status report Alaska’s polar bears that details threats to the species and a set of recommendations for action. The report notes the risks to polar bears from significant oil spills, routine pollution, and the indirect effects of oil and gas drilling in frightening off polar bear prey.

22. In addition to specifically polar bear focused work, Defenders also actively participates in scientific, policy, legal, and other fora regarding the causes of global climate change and the unique threat climate change poses for wildlife and the habitats on which they depend. Changes from a warming climate are being felt first in the Arctic, and Defenders is working actively to protect Arctic species and habitats. These efforts include policy and legal advocacy to mitigate the effects of climate change through the reduction of greenhouse gases, and to help vulnerable wildlife and ecosystems adapt to climate change, including managing for resiliency of these species and habitats by minimizing and mitigating other non-climate threats.

23. At the national level, in 2007, Defenders published “Navigating the Arctic Meltdown,” a series of ten publications focused on Arctic wildlife threatened by global warming, including the spectacled eider, the walrus, the orange-crowned warbler, caribou, Kittlitz’s murrelets, Arctic cod, the Arctic loon, the wolverine, the ivory gull, and the polar bear. Defenders also hosted a symposium in September 2007 entitled “Reducing the Impact of Global Warming on Wildlife,” in which conservation and policy leaders from across the country joined

together to talk about the critical need for wildlife adaptation and active management in the face of a warming world.

24. Defenders works to address the threats of traditional fossil fuel extraction and combustion both because of their direct impacts on wildlife and because of their contributions to global climate change. Oil and gas activities, like those proposed in Shell Offshore Inc.'s exploration drilling plans for the Beaufort and Chukchi Seas in the summer 2012, which we opposed, directly contribute to climate change through the emission of greenhouse gases. In addition, the noise, pollution, and other effects associated with oil and gas activities are likely to increase the stress on ecosystems and wildlife resulting from a changing climate.

25. Defenders works to combat the environmental impacts of oil and gas drilling throughout the United States, including in Alaska's fragile Arctic waters. Defenders has provided extensive comments to the BOEM regarding our concerns about oil and gas leasing and exploration in this area. Our members and supporters have submitted tens of thousands of comments encouraging the federal government to roll back its expansion of planned drilling in the waters off Alaska, due in large part to the impact of drilling and of global warming on marine wildlife. We have also participated in previous litigation challenging BOEM's failure to comply with federal law in its decision to reject such comments and concerns and proceed with approvals for leasing and drilling in this fragile environment.

26. Defenders regularly testifies at the state, local, and national levels on matters related to offshore oil drilling. For example, in August 2009, Defenders submitted written testimony at the Anchorage public hearing of the White House Interagency Ocean Policy Task Force, highlighting the threats of offshore oil drilling in Alaska's highly productive yet fragile marine waters. These threats are especially severe in the Arctic waters of the Beaufort and

Chukchi Seas as there is no proven clean up technology currently available to adequately or effectively address oil spills in the broken sea ice and extreme meteorological conditions found in these areas.

27. More recently, Defenders has submitted comments on a host of issues related to the development of fossil fuels in the Arctic, including in the Beaufort and Chukchi Seas and the Arctic National Wildlife Refuge. For example, Defenders submitted comments on August 17, 2017, responsive to the Department of the Interior's request for information on a new five-year OCS plan. On June 23, 2017, Defenders joined comments on BOEM's consideration of Eni's Initial Outer Continental Shelf Lease Exploration Plan for Beaufort Sea, Alaska (March 2017). On May 22, 2017, Defenders joined comments in support of S. 985, a bill to prohibit the Secretary of the Interior from revising the approved oil and gas leasing program for fiscal years 2017 through 2022. In September 2016, Defenders commented on the Draft Environmental Impact Statement for the Cook Inlet Outer Continental Shelf Oil and Gas Lease Sale 244 (81 Fed. Reg. 47,819 (July 22, 2016)).

28. Oil exploration and drilling on the outer continental shelf of Alaska is likely to harm Defenders' members' use and enjoyment of the Arctic lands and waters and the wildlife that reside there. Increased noise and pollution threaten bowhead, gray, humpback, and beluga whales, various ice-dependent seals, Pacific walrus, and polar bears. In addition, an oil spill could have devastating effects on Arctic wildlife populations and their habitat. If spilled oil reached the coast it would impact not just marine mammals but numerous sensitive coastal birds and other wildlife. To underscore the point, after the Deepwater Horizon oil spill Defenders prepared a fact sheet on the possible impacts of a similar disaster in the Arctic. *See* Wildlife and

Offshore Drilling: The 2010 Gulf of Mexico Disaster: Implications for the Arctic, *available at* https://defenders.org/publications/wildlife_and_offshore_drilling_arctic.pdf

29. Defenders specifically advocated for the withdrawal of the both the Arctic and the Atlantic Ocean from the Outer Continental Shelf Leasing Program. In September 2016, Defenders helped to prepare a national conservation group letter to President Obama urging him to “exercise[e] your statutory authority to withdraw the U.S. Arctic and Atlantic oceans permanently from all future oil and gas leasing.” *See* National Conservation Group Letter to President Barack Obama, Sept. 20, 2016, *available at* <https://www.nrdc.org/sites/default/files/public-arctic-and-atlantic-ceo-withdrawal-letter-20160920.pdf>. President Obama’s decision to do so was a historically significant victory for the conservation of these regions.

30. These are just a few examples of actions Defenders has taken to protect our coasts from the impacts of energy development. The potential development of oil and gas in the sensitive waters of the Arctic and the coastal areas of the Atlantic is an issue of great concern to Defenders institutionally and to our members.

31. Defenders’ organizational interests and its members’ interests in the conservation of marine species, from polar bears in the Arctic to the North Atlantic right whale and other cetacean species in the Atlantic, as well as healthy ocean ecosystems generally, will be injured if the Trump Administration succeeds in promoting leasing and drilling off our fragile coasts.

32. Defenders brings this case to vindicate its organizational interests and its members’ interests in protecting marine wildlife species and coastal ecosystems from the enormously harmful impacts of oil and gas development and associated activities, including high

intensity noise pollution resulting from seismic surveys, drilling, and the possibility of catastrophic spills.

33. My interests, along with the interests of Defenders and its members around the country, would be remedied if this court ruled in favor of Plaintiffs in this matter.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 6/1/18


MICHAEL P. SENATORE